

124 FERC ¶ 61,082  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Petal Gas Storage, L.L.C.

Docket No. RP08-421-000

ORDER ACCEPTING TARIFF SHEETS SUBJECT TO CONDITIONS

(Issued July 24, 2008)

1. On June 24, 2008, Petal Gas Storage, L.L.C. (Petal) filed, pursuant to section 4 of the Natural Gas Act (NGA), tariff sheets listed in the Appendix. Among other things, Petal proposes to clarify: (1) how it manages imbalances for firm and interruptible transportation services; (2) the priority of services for service requests and scheduling purposes; (3) the rollover limits on capacity releases for 31 days or less; and, (4) the procedures for title transfers of gas in storage. Petal also updates the price index used for pricing penalties and makes other minor ministerial revisions. Petal requests the Commission permit the revised tariff sheets to become effective July 23, 2008. The Commission denies waiver of the 30-day notice period contained in section 154.207 of the Commission's regulations<sup>1</sup> and accepts the referenced tariff sheets, effective July 25, 2008, subject to Petal filing revised tariff sheets within 20 days of the date this order issues, as more fully discussed below.

**I. Petal's Filing**

2. Petal proposes numerous changes to its General Terms and Conditions (GT&C) and the tariff's *pro forma* service agreements. First, Petal proposes to add a "Form of Master Service Agreement for Capacity Release Transactions" to enable it and a replacement shipper to execute one agreement to cover multiple capacity release transactions. Petal states this proposal will maximize the efficiency of the capacity release mechanism for the benefit of its shippers.

3. Petal adds new tariff language under its firm transportation service (FTS) and interruptible transportation service (ITS) rate schedules describing how firm and

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<sup>1</sup> 18 C.F.R. § 154.207 (2008).

interruptible transportation service shippers will manage their daily imbalance activity. Petal states it may refrain from delivering gas quantities it fails to receive from its shippers and will require shippers to use their best efforts to minimize imbalances for gas received and delivered to Petal. If an imbalance does exist, Petal may: (1) adjust the quantity received from or delivered to the shipper to protect the operational integrity of its system; (2) require the shipper to eliminate the imbalance at the end of the month; and, (3) allow a shipper to schedule make-up volumes. Also, firm and interruptible transportation shippers receiving gas from their firm or interruptible storage contract at the Petal Paper Pooling Point will have their imbalances eliminated through an adjustment to the balance in their firm storage or interruptible storage accounts. Furthermore, Petal proposes to require firm and interruptible transportation shippers receiving gas from any other points of receipt to maintain a balancing agreement under Rate Schedules Interruptible Storage Service (ISS) or Advancing Service (AVS), or they may choose to obtain equivalent balancing services from an approved third-party balancing provider.

4. Petal proposes at section 4.1 of its GT&C to separately state the scheduling priorities for storage and transportation services. Specifically, Petal will allocate and schedule storage service between receipt and delivery points in declining priority, as follows: (1) primary to primary; (2) primary to secondary or secondary to primary; (3) secondary to secondary; (4) interruptible storage to receipt or from delivery point(s); (5) authorized overrun for firm storage; and (6) authorized overrun service for interruptible storage. Similarly, Petal will allocate and schedule transportation service in declining order between receipt and delivery points, as follows: (1) primary to primary; (2) primary to secondary or secondary to primary; (3) secondary to secondary; (4) make-up volumes to correct imbalances; (5) interruptible transportation; (6) authorized overrun for firm transportation; and (7) authorized overrun for interruptible transportation. Petal will determine the scheduling priority for Rate Schedule ISS and AVS by comparing the average daily interruptible storage charge, with the highest charge calculated on a daily basis given the highest priority. Regarding service to firm shippers, Petal proposes to interrupt service pro rata based on confirmed nominations.

5. In section 4.9 of Rate Schedule FSS and section 4.11 of Rate Schedule FTS, Petal adds language to its provisions concerning the rollover limit on capacity releases for 31 days or less. Petal clarifies these provisions by stating that a releasing shipper that releases its capacity for 31 days or less cannot rollover or extend the release period or re-release its capacity to the same replacement shipper at less than maximum tariff rate until twenty-eight days or more has elapsed since the termination of the prior release. In addition, the releasing shipper may release the capacity to the same replacement shipper at less than maximum tariff rate through the notification and bidding procedures in sections 4.3, 4.4 and 4.5 of each rate schedule.

6. Petal also clarifies, at section 20 of its GT&C, that a shipper who contracted for storage service may sell its storage working gas by title transfer if Petal determines the transfer will not affect its ability to meet its obligations to existing shippers or the operations of its storage facilities. Petal also adds language allowing it to reject the transfer if the request: (1) diminishes Petal's ability to meet all of its other service obligations; (2) increases Petal's firm service obligations; (3) has a retroactive effective date; (4) causes either Customer to exceed its Maximum Daily Withdrawal Quantity; or, (5) threatens the operational integrity of Petal's system.

7. For calculating penalties, Petal updates the price index it uses by switching from Tennessee Onshore Zone 1 to Transco Zone 4, as published in Platts Inside FERC. Petal effects this revision because its Transco interconnect is located in Transco Zone 4, and a shipper would need transportation on Tennessee Gas Pipeline to transport gas from Zone 1 to Petal.

8. Finally, Petal also proposes a number of minor miscellaneous housekeeping changes. The miscellaneous changes include: (1) updating Koch Gateway Pipeline Company's name to Gulf South Pipeline Company; (2) adding electronic mail and website notice as a source of communication; (3) updating Petal's contact fax number; and, (4) correcting references to various sections of the tariff.

## **II. Notice and Intervention**

9. Notice of Petal's filing issued on June 26, 2008. Interventions and protests were due July 7, 2008, as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2008). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2008), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. On July 7, 2008, BP American Production Company and BP Energy Company (collectively referred to as BP) filed a protest. On July 15, 2008, ArcLight Energy Marketing, LLC (AEM) filed a protest eight days out-of-time.<sup>2</sup> On July 17, 2008, Petal filed an answer. While the Commission's Rules of Practice and Procedure generally prohibit answers to protests or answers, pursuant to Rule 213 of the Commission's

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<sup>2</sup> AEM filed a document it styled as a "motion to intervene and protest" on July 7, 2008, but the document comprised a request for intervention only, contained no substantive protest, and no request for leave to file a late protest. It was not until July 15, 2008 that AEM filed its substantive protest. The Commission rejects AEM's July 18, 2008, answer to Petal's answer.

regulations,<sup>3</sup> the Commission will accept Petal's answer in this proceeding to allow a better understanding of the issues.

### **III. Protests**

10. BP protests certain aspects of Petal's proposed revisions and in addition, protests certain existing tariff provisions that Petal does not propose to revise in this filing. BP asserts the Commission has authority pursuant to section 5 of the NGA to require a pipeline to revise an existing tariff provision that violates Commission policy in a proceeding the pipeline instituted under NGA section 4 to revise other provisions. We agree and in the discussion below will address BP's issues.<sup>4</sup>

11. AEM also protests certain aspects of Petal's proposed revisions including in-field title transfers, firm and interruptible service priorities, and the lack of transparency of Petal's tariff. Since AEM offers a reasonable explanation for its late-filed protest, we accept the protest and address AEM's issues below.

### **IV. Discussion**

#### **A. Scheduling Priority**

12. BP states that Petal's existing language in sections 4.1(b)(vi) and (vii) of its GT&C gives a higher scheduling priority to authorized overrun service for firm transportation service, as compared to interruptible transportation service. Petal proposes in sections 4.1(a)(iv) and (v) of its GT&C, to give its storage services similar scheduling priorities. BP argues that Commission policy requires that overrun and interruptible services shall have the same priority.

13. The Commission agrees that authorized overrun service for firm and interruptible shippers should have the same scheduling priority. Petal's proposal to give a higher scheduling priority to authorized overrun service for firm storage service compared to interruptible storage, which is the same scheduling priority provided in its current tariff

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<sup>3</sup> 18 C.F.R. §385.213(a)(2) (2008).

<sup>4</sup> *Tuscarora Gas Transmission Co.*, 120 FERC ¶ 61,022, at P 13 (2007); *East Tennessee Natural Gas Co.*, 112 FERC ¶ 61,261, at P 8 (2005), *order on clarification and compliance filing*, 114 FERC ¶ 61,153 (2006); *Natural Gas Pipeline Company of America*, 102 FERC ¶ 61,326, at P 19 (2003), *clarified*, 106 FERC ¶ 61,310, *order on clarification and reh'g*, 108 FERC ¶ 61,170 (2004) (the Commission required the pipeline to revise a tariff provision not addressed in its section 4 filing).

for firm transportation service compared to interruptible transportation service. This proposal contravenes the Commission's policy that overrun and interruptible services have the same priority.<sup>5</sup> Although the firm transportation service language is part of Petal's existing tariff, pursuant to section 5 of NGA, the Commission requires Petal to revise both the existing tariff provision and the proposed tariff provisions in section 4.1 of GT&C to give overrun services and interruptible services the same priority. Petal in its answer has agreed to make this revision to its existing tariff.<sup>6</sup>

### **B. Curtailment**

14. Petal proposes in section 4.4 of its GT&C to change the basis of pro-rata curtailment of firm service from service entitlements to confirmed nominations. BP agrees that curtailing based on confirmed nominations for the first day is appropriate. However, BP states that it is not appropriate if the curtailment event extends past the first day. BP argues that Petal should base curtailment on each shipper's capacity entitlement after the initial curtailment day. In its answer, Petal argues that using confirmed nominations throughout an entire period of curtailment is more indicative of the actual market conditions than basing curtailed capacity allocation on firm service entitlements that may or may not reflect actual shipper nominations. Also, BP expresses concern that shippers will have an incentive to submit unrealistically high nominations to obtain more allocated capacity if curtailment extends past the first day. Petal responds that for Petal to confirm any nomination, the shipper must have equivalent confirmed nominations both upstream and downstream of Petal's system. The Commission accepts Petal's answer and directs Petal to clarify its tariff to explain that for curtailments that extend beyond one day, it will curtail based on confirmed nominations for that curtailment day.

### **C. Daily Balancing**

15. BP protests Petal's proposal to impose a daily balancing obligation on firm transportation shippers. BP argues that Petal can only require daily balancing pursuant to an Operational Flow Order (OFO) when operational conditions are at stake and that

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<sup>5</sup> *Portland Natural Gas Transmission System*, 106 FERC ¶ 61,289, at P 50 (2004); *TriState Pipeline, L.L.C.*, 88 FERC ¶ 61,328, at 62,006 (1999); *Puget Sound Energy, Inc.*, 84 FERC ¶ 61,347, at 62,516 (1998); *CNG Transmission Corp.*, 81 FERC ¶ 61,346, at 62,592 (1997); *National Fuel Gas Supply Corp.*, 63 FERC ¶ 61,291, at 63,024 (1993); *High Island Offshore System and U-T Offshore System*, 63 FERC ¶ 61,280, at 62,826 (1993); *Equitrans, Inc.*, 63 FERC ¶ 61,009, at 61,063-064 (1993); and *Tennessee Gas Pipeline Co.*, 62 FERC ¶ 61,250, at 62,676 (1993).

<sup>6</sup> Petal's Answer at 3.

generally, a shipper's balancing obligation should only apply on a monthly basis. For similar reasons, BP protests Petal's proposal to allow Petal to adjust a firm transportation shipper's storage inventory to balance the shipper's transportation account at the Petal Paper Pooling Point. BP also states that Petal should specify how it will eliminate an imbalance at the end of the month. Further, BP requests the Commission to require Petal to schedule the make-up nomination, if there is available capacity. BP objects to tariff language that might be interpreted as merely allowing Petal to permit make-up volumes. BP requests the Commission to direct Petal to revise and clarify the language to state that if a customer asks to schedule make-up volumes to reduce or eliminate an imbalance, Petal must accommodate that make-up nomination if it has capacity available to do so.

16. In its answer, Petal maintains that the language proposed merely establishes that Petal "*can* require a shipper to balance receipts and deliveries in the event of an operational constraint; contrary to BP's implication..." Petal avers its proposed language does not require shippers to constantly remain in balance. Petal states it intended only to improve the reliability of its transportation service and avoid the burden of imposing curtailments through OFOs on its customers. Petal also contends its balancing provisions grant shippers additional flexibility to use existing storage contracts. The Commission agrees that Petal's option to require a shipper to balance daily to manage operational constraints is a valid concern and its proposal, a reasonable remedy should such circumstances arise. Therefore, we deny BP's protest and accept Petal's proposal.

#### **D. Obligatory Balancing Agreement**

17. In new sections 9.2 of Rate Schedule ITS and 11.2 of Rate Schedule FTS, Petal proposes to require a shipper to acquire balancing services from Petal or a Petal-approved third-party service provider. BP asserts Petal should not require firm shippers to obtain a particular balancing agreement. In fact, continues BP, the Commission's policy obligates a pipeline to offer a balancing agreement and allows the firm shipper the discretion to decide whether to use it. We agree. Accordingly, the Commission rejects Petal's proposal to require a firm transportation shipper to acquire a separate balancing service with Petal or a Petal-approved third-party. While the Commission's regulations require a pipeline to offer imbalance management services (18 C.F.R. § 284.12(b)(1)(iii)), it is the shipper's choice to use any such service and if it does, what balancing services to use, whether from the pipeline or a third-party. Therefore, we direct Petal to submit revised tariff sheets deleting language requiring shippers to contract for balancing services.

#### **E. Full Reservation Charge Credit to Firm Shippers During Curtailment**

18. BP states that it is Commission policy that when a pipeline curtails firm service it must provide a reservation charge credit to firm service customers unless the service interruption was caused by an event outside the pipeline's control, such as a *force*

*majeure* situation. BP states that Petal's existing tariff does not contain such a provision, and the Commission should require Petal to adopt tariff language that provides for a full reservation credit during curtailment.

19. BP is correct that the Commission consistently requires pipelines to provide full reservation charge credits when the pipeline curtails service.<sup>7</sup> Requiring the credit will "provide an incentive for the pipeline to manage its system so that it can avoid interruptions that it could have avoided if it had better managed its system."<sup>8</sup> In its answer Petal offers to revise its tariff to provide a full reservation charge credit to firm customers during curtailment, except for situations not under its control, such as *force majeure*. Accordingly, we direct Petal to revise its tariff provision to comply with the Commission's policy.

#### **F. Partial Reservation Charge Credit During Force Majeure**

20. BP also states that, in contrast to the situation where curtailment is within the control of the pipeline, when curtailment is due to a *force majeure* situation, the Commission requires the pipeline to provide a partial reservation charge credit to firm service customers. In a *force majeure* situation no party is held entirely responsible for the consequences associated with the interruption.<sup>9</sup> BP points out that Petal's tariff lacks any provision to provide for this credit.

21. BP states the Commission previously permitted two types of partial credits in the *force majeure* situation – "the Safe Harbor Method," and the "No-Profit Method." The Safe Harbor Method requires a full credit but only for periods that exceed a specified

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<sup>7</sup> *Natural Gas Pipeline Company of America*, 102 FERC ¶ 61,326, at P 18 (2003), *clarified*, 106 FERC ¶ 61,310, *order on clarification and reh'g*, 108 FERC ¶ 61,170 (2004) (NGPL); *Tuscarora Gas Transmission Co.*, 120 FERC ¶ 61,022 at P 15-16; *Southern Natural Gas Co.*, 99 FERC ¶ 61,345, Appendix A, section 3(H) (2002); *El Paso Natural Gas Co.*, 99 FERC ¶ 61,244, at 62,013, *order on clarification*, 100 FERC ¶ 61,285 (2002), *order on reh'g*, 104 FERC ¶ 61,045 (2003).

<sup>8</sup> NGPL, 102 FERC ¶ 61,326 at 62,116, P 19, *quoting Tennessee Gas Pipeline Co.*, 76 FERC ¶ 61,022, at 61,086 (1996), *order on reh'g*, 80 FERC ¶ 61,070, at 61,198 (1997) (*Tennessee* or Opinion No. 406).

<sup>9</sup> *Tennessee*, 76 FERC ¶ 61,022 at 61,089.

period, usually ten days.<sup>10</sup> The No-Profit Method requires a credit throughout the curtailment, but limits the credit to the portion of the rate that reflects the pipeline's return on equity and related taxes. BP asserts that the Commission should require Petal to adopt the No-Profit Method because there are flaws in the Safe Harbor Method. BP contends that the Safe Harbor Method allows the pipeline to continue to collect the full reservation charge during a specified period and reduces the pipeline's incentive to act diligently to remedy the *force majeure* situation.

22. In its answer, Petal states it will revise its tariff consistent with Commission policy, and adopt the Safe Harbor Method, since the Commission permits either method.

23. The Commission denies BP's request to direct a particular crediting methodology, since the Commission permits both approaches. Either approach allows both the pipeline and the shipper to share the adverse consequences when a *force majeure* situation arises. Accordingly, we direct Petal to revise its tariff to include a partial reservation charge credit to shippers when curtailment is due to *force majeure*, as indicated in its answer.

#### **G. The Standard for Petal's Liability**

24. BP asserts that Petal's existing tariff in section 4.5 of its GT&C limits Petal's liability for loss or damage to a shipper to a situation "caused solely by Petal's gross negligence or willful misconduct," which BP characterizes as the "Gross Negligence Standard."<sup>11</sup> BP contends the Gross Negligence Standard violates long-standing Commission policy that holds the pipeline liable for damages caused by the pipeline's simple negligence, "Simple Negligence Standard." Thus, BP asserts, the Commission "has consistently held that a Simple Negligence Standard is appropriate for the liability and indemnification provisions of open access tariffs," including liability for storage gas

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<sup>10</sup> *NGPL*, 102 FERC ¶ 61,326 at P 18, *order on clarification and reh'g*, 108 FERC ¶ 61,170 at P 8.

<sup>11</sup> GT&C section 4.5 provides:

Interruption Liability. Petal shall not be liable for any loss or damage to any person or property caused, in whole or in part, by any interruption of service, except to the extent caused solely by Petal's gross negligence or willful misconduct.



losses.<sup>12</sup> According to BP, the Commission adopted that policy because the Simple Negligence Standard provides a much stronger incentive to the pipeline to operate its system in a prudent manner than does the Gross Negligence Standard. Under the Simple Negligence Standard, the pipeline may limit its liability to direct damage.

25. BP also states that Petal's existing tariff provision makes Petal liable for loss or damages "caused solely" by Petal's negligence (the Sole Liability Standard). BP argues that liability should not be so limited, but rather, the Commission should hold Petal liable if its negligence is responsible to any extent, for the resulting damages, consistent with the comparative negligence standard in most states, including Mississippi, where Petal is located.

26. BP asserts the Commission requires use of the Comparative Negligence Standard.<sup>13</sup> In *Koch*, the pipeline proposed that it would be liable for negligence associated with its electronic bulletin board but only if the damages were due to its "sole negligence." The Commission required the pipeline to remove the word "solely" because "the inclusion of the word 'solely' in its liability standard would rule out a situation where [the pipeline] and another party are both negligent."

27. Petal asserts in its answer that under the simple negligence standard, indirect damages, such as punitive damages, can be assessed only in situations of gross negligence or bad faith by the pipeline.

28. As explained in *Koch*, use of the word "solely" to trigger pipeline negligence liability beclouds the issue when the pipeline is charged with negligence, and the word "solely" should be removed from Petal's tariff. Accordingly, we direct Petal to revise its tariff to include the Simple Negligence Standard, so that Petal may be wholly or partially liable for damages caused in whole or in part by its negligence.

#### **H. Petal's Liability for Lost Gas**

29. BP protests Petal's existing tariff language in section 12.2 of its GT&C concerning "lost and unaccounted for volumes." The Commission's general policy on lost gas is that

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<sup>12</sup> See *Gulf States Transmission Corp.*, 114 FERC ¶ 61,006, at P 5 (2006); see *Entrega Gas Pipeline, Inc.*, 112 FERC ¶ 61,177, at P 65, *order on reh'g*, 113 FERC ¶ 61,327 (2005), *aff'd on reh'g*, 114 FERC ¶ 61,326, at P 14 (2006); *Guardian Pipeline LLC*, 101 FERC ¶ 61,213 (2006); *Cameron LNG*, 115 FERC ¶ 61,229, at P 37 (2006).

<sup>13</sup> *Koch Gateway Pipeline Co.*, 65 FERC ¶ 61,338, at 62,619 (1993) (*Koch*).

The pipeline and the shipper are deemed to be responsible for the gas while it is in their respective control and possession; it is reasonable to assume that the parties can more readily insure against loss while the gas is in their possession. The Commission requires that a pipeline be responsible for gas lost while in its possession, even if the loss is due to Force Majeure; a pipeline's responsibility for gas while in its possession requires that the pipeline indemnify the owner of the gas if the gas is lost.<sup>14</sup>

30. BP notes the Commission previously stated that where a pipeline, like Petal possesses market-based rates for its storage service, a pipeline can restrict its liability for the loss of storage gas to situations where the loss is due to the pipeline's simple negligence because in "these circumstances, a customer can factor the pipeline's lack of liability, coupled with its proposal to offer insurance, into their rate negotiations."<sup>15</sup>

31. BP further notes that Petal's tariff also includes a fuel tracker that encompasses "lost and unaccounted for volumes."<sup>16</sup> The tariff also has a separate provision that addresses Petal's liability for lost gas which would apply to both transportation and storage:

The risk of loss for all gas injected into, stored in and withdrawn from storage, or transported, shall remain with Customer, and Petal shall not be liable to Customer for any loss of gas, except as may be occasioned due to the intentional or grossly negligent acts or omissions by Petal.<sup>17</sup>

32. BP asserts the tariff does not indicate whether Petal has acquired casualty insurance to cover non-routine storage gas losses. BP asks the Commission to direct Petal to revise its tariff to require Petal to bear the liability of a non-routine storage gas loss, i.e., any storage gas loss that is not associated with the routine maintenance or other normal operations of its system, which may be recovered through the "lost-and-unaccounted-for" component of Petal's fuel tracker.

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<sup>14</sup> *Tres Palacios Gas Storage*, 120 FERC ¶ 61,253, at P 67 (2007) (*Tres Palacios*).

<sup>15</sup> *Id.* P 68.

<sup>16</sup> GT&C §19.2, Seventh Revised Sheet No. 127.

<sup>17</sup> GT&C §12.2, Second Revised Sheet No. 121.

33. BP acknowledges that Petal has market-based storage service. In that situation the Commission permits the parties to deviate from the general policy on lost gas, quoted above, since that issue may be a factor in the rate negotiations. Petal's lost gas provision, quoted below by BP, is similar to the one accepted by the Commission in *Tres Palacios*, *supra*. In that case, the pipeline offered to obtain insurance on behalf of its customer to cover such loss, but the Commission has made clear that "Storage providers are not required to provide insurance for their customers..."<sup>18</sup> Here, Petal in GT&C section 16 provides that "Customer shall be responsible providing its own insurance coverage with respect to its gas in Storage Facility." Under these circumstances the Commission finds no basis not to accept Petal's provision that follows the Commission-approved provision in *Tres Palacios*.

34. In its answer, Petal advises that it does not have a Lost and Unaccounted-for gas (L&U) tracker in its tariff, as BP claims it does. In fact, Petal in section 19 of its GT&C accounts for fuel usage, including L&U volumes monthly based on actual fuel used and L&U incurred during that month and assesses customers on a pro rata basis based on Customer's injected volumes for storage service, and on a pro rata based on Customer's transported volumes for transportation service. Moreover, continues Petal, gas lost because of a non-routine failure is identifiable to a specific origin and would not qualify as L&U.

35. The Commission agrees with Petal concerning lost gas and finds BP's concern here, lacks merit. Accordingly, the Commission denies BP's protest.

### **I. In-Field Title Transfers**

36. AEM protests Petal's proposal in section 20 of its GT&C to allow Petal to limit in-field transfers of storage inventory. AEM states that not only are Petal's proposed limitations unnecessary, but they will also impose an undue burden on the competitive market. AEM asserts that to the extent that injection or withdrawal activity runs up against contractual or operational limits, Petal can at that point use its tariff rights to remedy the problem. Also, by Petal adding a 24-hour approval process, AEM claims that Petal eliminates the parties' ability to secure a dependable hedge, and would virtually eliminate in-field transfers.

37. In its response, Petal views the entirety of AEM's protest as unsupported and vague and beyond the scope of this proceeding. However, should the Commission address the protest, Petal opines that "its operational needs ought not be driven by its

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<sup>18</sup> *Tres Palacios*, 120 FERC ¶ 61,253 at P 68.

shippers' desires to engage in hedging transactions.<sup>19</sup> Petal adds in-field transfers often impact the injection and withdrawal rights of all its storage customers and may disrupt planned maintenance.

38. The Commission accepts AEM's protest on this issue as we are not persuaded by Petal's answer. Furthermore, Petal's proposal for a 24 hour approval process violates Commission policy recently approved in Order No. 712.<sup>20</sup> The new capacity release rule permits shippers to release capacity along with selling gas without having to wait 24 hours. We see no good rationale for imposing a 24 hour requirement on in-field transfers, which is really a pure gas sale. We believe Petal's tariff contains sufficient authority for it to protect the operational integrity of its system. Therefore, we direct Petal to remove this proposal or explain how it is consistent with the policies approved in Order No. 712.

#### **J. Relationship Between Storage and Transportation Priorities**

39. AEM states that although Petal attempts to clarify storage and transportation service priorities in a revised section 4 of its GT&C, it creates unnecessary and potentially discriminatory differentiations between customers because of pathing concerns. However, AEM admits that "with one exception, the service priorities seem generally consistent with those found in most pipeline tariffs."<sup>21</sup> AEM also claims that it cannot find any explanation of the relationship between the storage and transportation priorities in Petal's proposed tariff language. AEM acknowledges that the tariff sets forth the priorities for the services but asserts that absent an explanation how they relate to each other "some anomalies and unintended consequences could result."<sup>22</sup>

40. AEM continues by noting that Petal's path-derived priorities on the pipeline have no practical significance because the pipeline only traverses 59-miles. AEM questions which point is truly primary when shippers have cumulative primary capacity assigned to them. It therefore requests the Commission to require Petal to provide a design schematic and explain how it arrived at the assumed contractual capacity for each point

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<sup>19</sup> Petal's Answer at 13.

<sup>20</sup> *Promotion of a More Efficient Capacity Release Market*, Order No. 712, FERC Stats. & Regs. ¶ 31,271 (2008).

<sup>21</sup> AEM's Protest at 6.

<sup>22</sup> *Id.*

and how it assigns that capacity. AEM also requests the Commission require Petal to eliminate the path-based transportation priority proposed in this filing.

41. Petal responds by advising the Commission of two important factors to consider regarding AEM's protest. First, AEM purchased firm storage service on Petal, but attempts to use interruptible transportation to inject or withdraw storage gas. AEM routinely elects to use its firm transportation capacity using a receipt point other than storage. Petal adds that it's not surprising that AEM encounters some scheduling issues when it tries to transport its stored volumes. Apparently, AEM uses its FTS service for transportation of gas originating outside of storage, while concurrently attempting to transport stored gas via ITS service. Petal maintains that the several other extraneous issues raised by AEM, mentioned briefly above, really have nothing to do with the limited issue of scheduling priorities between its storage and transportation services.

42. The Commission finds that Petal sufficiently clarified the scheduling priorities of its service offerings in its tariff and even added more specificity to its tariff. Firm service is always superior to interruptible service and scheduling according to contractually agreed primary points of receipt and delivery and then secondary points conforms to industry practice and the Commission's policy. In addition, AEM opines it may be the victim of some type of discrimination, but offers no detailed examples of alleged undue discrimination between it or any other customers under Petal's currently effective tariff, which as noted above, Petal has further clarified here. We find that AEM has not shown how the proposed service priorities are not consistent with Commission policy. Accordingly, we deny the protest and the request that the Commission direct Petal to supply a design schematic or any associated explanations.

43. AEM states that it is "troubled by the use of the combined value to the owners of Petal of both ISS and IT." AEM claims this will permit "Petal to require IT shippers purchase ISS in order to make a purely IT transaction between two pipeline interconnections."<sup>23</sup>

44. Revised section 1(d) of Rate Schedule ITS specifically provides service for any customer who executes an "ITS agreement only and agrees to comply with the balancing provisions contained in Section 9, herein." It does not require the execution of an ISS agreement to receive transportation service only. Thus, the predicate advanced by AEM on this issue is not supported by the current effective tariff or the instant proposal. Again, AEM fails to identify any circumstance, past or present which supports its allegations. Nor does AEM point to where Petal's proposed tariff requires the combining of Petal's

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<sup>23</sup> AEM's Protest at 10.

interruptible services or causes a shipper to pay other than the authorized rates for those services. We find it apparent that AEM has misread Petal's tariff and deny the protest.

45. AEM states that portions of the current filing are in response to an ongoing discrepancy between Petal and AEM over the interpretation of Petal's tariff. AEM claims that it has been unclear for some time now on how point capacity is actually determined for Open Seasons and contract negotiations, how point capacity is being assigned, and how nominations are scheduled on the Petal system. AEM also states that transparency of how the rules are applied is a vital concern particularly where market-based facilities are involved. AEM claims that it has been unable to obtain sufficient information to determine what errors have caused financial harm on AEM and for that reason requests that Petal implement an EBB or web-based system that notifies customer in advance of potential disruptions or constraints on service availability. We deny AEM's protest. We find that Petal's tariff provides adequate transparency to all shippers in regards to open seasons and contract negotiations, how capacity is assigned, and how nominations are scheduled. Although AEM raises transparency concerns with Petal's tariff, it does not provide specific examples of where Petal's tariff does not conform to Commission policy or regulations.

46. For the reasons discussed above, the Commission conditionally accepts the tariff sheets, listed in the Appendix, to become effective July 25, 2008, subject to further clarification and modification.

The Commission orders:

(A) The tariff sheets listed in the Appendix are accepted, subject to the conditions discussed in the body of the instant order, to be effective July 25, 2008.

(B) Within 20 days of the issuance of this order, Petal must file revised tariff sheets and further explanation and clarification, consistent with the discussion in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**APPENDIX**

**Petal Gas Storage, L.L.C.  
FERC Gas Tariff, Original Volume No. 1**

**Tariff Sheets conditionally accepted,  
subject to revision or clarification effective July 25, 2008**

First Revised Sheet No. 1A	Fifth Revised Sheet No. 210
Fourth Revised Sheet No. 2	Fifth Revised Sheet No. 222
First Revised Sheet No. 11A	Original Sheet No. 235
Fifth Revised Sheet No. 15	Original Sheet No. 236
First Revised Sheet No. 65	Original Sheet No. 237
Third Revised Sheet No. 75	Original Sheet No. 238
First Revised Sheet No. 77	Original Sheet No. 239
First Revised Sheet No. 82	Original Sheet No. 240
First Revised Sheet No. 85	Original Sheet No. 241
First Revised Sheet No. 89	
Original Sheet No. 90	
Sheet Nos. 91 - 99	
First Revised Sheet No. 103B	
First Revised Sheet No. 103C	
Fifth Revised Sheet No. 104	
Sixth Revised Sheet No. 105	
Second Revised Sheet No. 107	
Third Revised Sheet No. 108A	
Seventh Revised Sheet No. 109	
Sixth Revised Sheet No. 110	
Second Revised Sheet No. 111	
Third Revised Sheet No. 112	
Fourth Revised Sheet No. 113	
Fifth Revised Sheet No. 115A	
First Revised Sheet No. 115C	
Second Revised Sheet No. 120	
Third Revised Sheet No. 122	
Eighth Revised Sheet No. 126	
Eighth Revised Sheet No. 127	
Second Revised Sheet No. 128	
First Revised Sheet No. 134	